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14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

17 UNITED STATES OF AMERICA)

18 Plaintiff,)

19 v.)

20 PHAOSTRON INSTRUMENT)
21 AND ELECTRONIC)
22 COMPANY,)

23 Defendant.)
24
25
26
27
28

Civil No.

CONSENT DECREE

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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA"),
4 filed a complaint in this matter pursuant to Sections 106 and 107 of the
5 Comprehensive Environmental Response, Compensation, and Liability Act
6 ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource
7 Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, against Phaostron
8 Instrument and Electronic Company ("Settling Defendant").

9 B. The United States in its complaint seeks, inter alia: (1) reimbursement
10 of costs incurred by EPA and the United States Department of Justice for response
11 actions at the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley
12 Superfund Sites, Areas 1-4, in Los Angeles County, California (the "BPOU
13 Area"), together with accrued interest; (2) performance of studies and response
14 work by Settling Defendant at the BPOU Area consistent with the National
15 Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) penalties of
16 not more than \$27,500 for each day in which Settling Defendant, without
17 sufficient cause, willfully violated, or failed or refused to comply with, EPA's
18 June 30, 2000 Unilateral Administrative Order No. 2000-13 issued under Section
19 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973
20 ("EPA's Order"), relating to the BPOU Area.

21 C. The Settling Defendant that has entered into this Consent Decree does
22 not admit, and specifically denies: (i) any liability to Plaintiff arising out of the
23 transactions or occurrences alleged in the complaint; (ii) that the release or
24 threatened release of hazardous substance(s) at or from the BPOU Area constitutes
25 an imminent or substantial endangerment to the public health or welfare or the
26 environment; and (iii) any liability for having willfully violated, or failed or
27 refused to comply with, EPA's Order relating to the BPOU Area.

28 D. The work required to implement the Record of Decision ("ROD") for

1 the BPOU Area, as supplemented by the Explanation of Significant Differences
2 (“ESD”), is being performed by other parties pursuant to EPA’s Order (as
3 amended).

4 E. The United States and Settling Defendant agree, and the Court by
5 entering this Consent Decree finds, that this Consent Decree has been negotiated
6 by the Parties in good faith, that settlement of this matter will avoid prolonged and
7 complicated litigation between the Parties, and that this Consent Decree is fair,
8 reasonable, and in the public interest.

9 NOW, THEREFORE, with the consent of the Parties to this Decree, it
10 is hereby ORDERED, ADJUDGED, AND DECREED:

11 II. JURISDICTION

12 1. This Court has jurisdiction over the subject matter of this action
13 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607,
14 and 9613(b). This Court also has personal jurisdiction over the Settling
15 Defendant. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and
16 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and
17 the underlying complaint, Settling Defendant waives all objections and defenses
18 that it may have to jurisdiction of the Court or to venue in this District. Settling
19 Defendant consents to and shall not challenge the terms of this Consent Decree or
20 this Court’s jurisdiction to enter and enforce this Consent Decree.

21 III. PARTIES BOUND

22 2. This Consent Decree applies to and is binding upon the following
23 parties: the United States, and Settling Defendant and its successors and assigns.
24 Any change in ownership or corporate status of Settling Defendant including, but
25 not limited to, any transfer of assets or real or personal property, shall in no way
26 alter Settling Defendant’s responsibilities under this Consent Decree.

27 IV. DEFINITIONS

28 3. Unless otherwise expressly provided herein, terms used in this

1 Consent Decree which are defined in CERCLA, RCRA, or in regulations
2 promulgated under CERCLA or RCRA shall have the meaning assigned to them in
3 CERCLA or RCRA or in such regulations. Whenever terms listed below are used
4 in this Consent Decree or in the appendices attached hereto and incorporated
5 hereunder, the following definitions shall apply:

6 "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2) of the
7 San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa,
8 Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted
9 generally on the map attached as Appendix A.

10 "CERCLA" shall mean the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

12 "Certification of Completion" shall mean EPA's written determination that
13 the Remedial Action has been performed and that the performance standards have
14 been achieved.

15 "Consent Decree" or "Decree" shall mean this Decree and all appendices
16 attached hereto (listed in Section XVIII). In the event of conflict between this
17 Decree and any appendix, this Decree shall control.

18 "Day" shall mean a calendar day unless expressly stated to be a working
19 day. "Working day" shall mean a day other than a Saturday, Sunday, or federal
20 holiday. In computing any period of time under this Consent Decree, where the
21 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run
22 until the close of business of the next working day.

23 "DOJ" shall mean the United States Department of Justice and any
24 successor departments, agencies, or instrumentalities of the United States.

25 "DTSC" shall mean the California Department of Toxic Substances Control
26 and any predecessor or successor departments or agencies of DTSC.

27 "EPA" shall mean the United States Environmental Protection Agency and
28 any successor departments, agencies, or instrumentalities of the United States.

1 “EPA Hazardous Substance Superfund” shall mean the Hazardous
2 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

3 “Explanation of Significant Differences” or “ESD” shall mean the
4 Explanation of Significant Differences relating to the BPOU Area issued by EPA
5 in May 1999. The ESD is attached as Appendix C.

6 “Interest” shall mean interest at the rate specified for interest on investments
7 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
8 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
9 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
10 interest accrues. The rate of interest is subject to change on October 1 of each
11 year.

12 “Paragraph” shall mean a portion of this Consent Decree identified by an
13 Arabic numeral or an upper case letter.

14 “Parties” shall mean the United States and Settling Defendant.

15 “Plaintiff” shall mean the United States.

16 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
17 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

18 “Record of Decision” or “ROD” shall mean the EPA Record of Decision
19 and all attachments thereto relating to the interim remedy for the BPOU Area,
20 which was signed by the delegate of the Regional Administrator, EPA Region 9,
21 on March 31, 1994. The ROD is attached as Appendix B.

22 “Remedial Action” shall mean those activities, except for Operation and
23 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

24 “Response Costs” shall mean: (i) all past costs, including, but not limited
25 to, direct and indirect costs, that the United States has incurred at or in connection
26 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future
27 costs (including, but not limited to, direct and indirect costs) related to the
28 implementation or oversight of the Work, that the United States will incur at or in

1 connection with the BPOU Area.

2 “Section” shall mean a portion of this Consent Decree identified by a
3 Roman numeral.

4 “Settling Defendant” shall mean Phaostron Instrument and Electronic
5 Company.

6 “Site” shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los
7 Angeles County, California.

8 “United States” shall mean the United States of America, including its
9 departments, agencies, and instrumentalities.

10 “Work” shall mean all activities required to be performed to implement the
11 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,
12 as supplemented by the ESD, at or in connection with the BPOU Area.

13 V. STATEMENT OF PURPOSE

14 4. By entering into this Consent Decree, the mutual objectives of the
15 Parties, as more precisely described in the terms of this Consent Decree, are:

16 a. To reach a settlement between the Parties with respect to the BPOU Area
17 that allows Settling Defendant to make a cash payment to resolve: (1) any claims
18 for civil or administrative liability under Sections 106 and 107 of CERCLA, 42
19 U.S.C. §§ 9607, 9607, and RCRA Section 7003, 42 U.S.C. § 6973, for interim
20 response actions and for response costs related to interim response actions
21 incurred and to be incurred at or in connection with the BPOU Area, and (2) any
22 claims for penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for
23 having willfully violated, or failed or refused to comply with, EPA’s Order
24 relating to the BPOU Area, as provided in Section VIII (Covenant Not to Sue by
25 Plaintiff) and Section IX (Reservation of Rights) of this Decree;

26 b. To resolve any claims of Settling Defendant that could have been
27 asserted against the United States with regard to the BPOU Area as provided in
28 Section X (Covenants Not to Sue by Settling Defendant) of this Decree;

1 c. To simplify the remaining administrative and judicial enforcement
2 activities concerning the BPOU Area by resolving the United States' claims
3 against Settling Defendant for interim response actions and for response costs
4 related to interim response actions incurred and to be incurred at or in connection
5 with the BPOU Area, as provided in Section VIII (Covenant Not to Sue by
6 Plaintiff) and Section IX (Reservation of Rights) of this Decree; and

7 d. To provide for contribution protection for Settling Defendant with
8 respect to matters addressed in this Consent Decree pursuant to Section 113(f)(2)
9 of CERCLA, 42 U.S.C. § 9613(f)(2).

10 VI. PAYMENT BY SETTLING DEFENDANT

11 5. Within 30 days of the effective date of this Consent Decree, Settling
12 Defendant shall pay to EPA \$1,650,000 in the manner described in this Section.

13 6. Payment shall be made by FedWire Electronic Funds Transfer
14 ("EFT") to the U.S. Department of Justice account in accordance with current EFT
15 procedures, referencing EPA Region 9 and Site Spill Number 0927, and DOJ Case
16 Number 90-11-2-354/19. Payment shall be made in accordance with instructions
17 to be provided to Settling Defendant by the Financial Litigation Unit of the U.S.
18 Attorney's Office in the Central District of California following lodging of the
19 Consent Decree.

20 7. At the time of payment, Settling Defendant shall send a letter
21 confirming the date and reference number of its FedWire EFT to the United States,
22 EPA, and the Regional Financial Management Officer as provided in Section XV
23 (Notices and Submissions) of this Decree.

24 8. Of the total amount to be paid pursuant to Paragraph 5 of this Consent
25 Decree, \$400,000 shall be deposited in the EPA Hazardous Substance Superfund
26 and \$1,250,000 shall be deposited in the Site 0927 San Gabriel Valley/Baldwin
27 Park Special Account within the EPA Hazardous Substance Superfund to be
28 retained and used to conduct or finance response actions at or in connection with

1 the BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance
2 Superfund.

3 9. Settling Defendant's payment to EPA includes an amount for: (i) the
4 Work; (ii) Response Costs incurred or to be incurred at or in connection with the
5 BPOU Area; (iii) a premium to cover the risks and uncertainties associated with
6 this settlement, including, but not limited to, the risk that the total cost of the Work
7 and Response Costs incurred or to be incurred at or in connection with the BPOU
8 Area will exceed the estimated total cost of the Work and Response Costs upon
9 which Settling Defendant's payments are based; and (iv) Settling Defendant's lack
10 of participation in work done by other potentially responsible parties under EPA's
11 Order.

12 VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

13 10. Interest on Late Payments. If Settling Defendant fails to make any
14 payment under Paragraph 5 within 30 days of the effective date of this Consent
15 Decree, then Settling Defendant shall pay Interest on the unpaid balance,
16 commencing on the date that payment is due and accruing through the date of
17 payment. Settling Defendant shall make all payments required by this Paragraph
18 in the manner described in Paragraphs 6 and 7 unless otherwise directed in writing
19 by EPA.

20 11. Stipulated Penalty.

21 a. In addition to the Interest required by Paragraph 10 (Interest on Late
22 Payments), if Settling Defendant fails to remit the payments to the United States
23 required by Paragraph 5 when due, then Settling Defendant also shall pay
24 stipulated penalties to the United States of \$1,000 per day for each day that its
25 payment is late.

26 b. Stipulated penalties are due and payable to the United States within 30
27 days of the date of the demand for payment of the penalties by the United States.
28 All payments to the United States under this Paragraph shall be identified as

1 “stipulated penalties” and shall be made by certified or cashier’s check made
2 payable to “EPA Hazardous Substance Superfund.” The check, or a letter
3 accompanying the check, shall reference the name and address of the party making
4 payment, the Site name, EPA Region 9 and Site Spill Number 0927, and DOJ Case
5 Number 90-11-2-354/19, and shall be sent to: EPA - Cincinnati Accounting
6 Operations, Attn: Region 9 Receivables, P.O. Box 371099M, Pittsburgh, PA
7 15251.

8 c. At the time of payment of any stipulated penalties to the United States,
9 Settling Defendant shall send copies of check(s), and any accompanying
10 transmittal letter(s), to the United States, EPA, and the Regional Financial
11 Management Officer as provided in Section XV (Notices and Submissions) of this
12 Consent Decree.

13 d. Penalties shall accrue as provided in this Paragraph regardless of whether
14 EPA has notified Settling Defendant of the violation or made a demand for
15 payment, but need only be paid upon demand. All penalties shall begin to accrue
16 on the day after payment is due and shall continue to accrue through the date of
17 payment. Nothing herein shall prevent the simultaneous accrual of separate
18 penalties for separate violations of this Consent Decree.

19 12. If the United States brings an action to enforce this Consent Decree,
20 Settling Defendant shall reimburse the United States for all costs of such action,
21 including, but not limited to, costs of attorney time.

22 13. Payments made under this Section shall be in addition to any other
23 remedies or sanctions available to Plaintiff by virtue of Settling Defendant’s
24 failure to comply with the requirements of this Consent Decree.

25 14. Notwithstanding any other provision of this Section, the United States
26 may, in its unreviewable discretion, waive payment of any portion of the stipulated
27 penalties that have accrued to the United States pursuant to this Consent Decree.
28 Payment of stipulated penalties shall not excuse Settling Defendant from its

1 payment obligation as required by Section VI or from performance of any other
2 requirements of this Consent Decree.

3 VIII. COVENANT NOT TO SUE BY PLAINTIFF

4 15. In consideration of the payment that will be made by Settling
5 Defendant under the terms of this Consent Decree, and except as otherwise
6 specifically provided in Section IX (Reservation of Rights), the United States
7 covenants not to sue or to take administrative action against Settling Defendant
8 pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and
9 Section 7003 of RCRA, 42 U.S.C. § 6973, for: (1) performance of the Work,
10 (2) recovery of Response Costs, and (3) penalties under Section 106(b) of
11 CERCLA, 42 U.S.C. § 9606(b), for having willfully violated, or failed or refused
12 to comply with, EPA's Order relating to the BPOU Area. This covenant not to sue
13 shall take effect upon the receipt by EPA of all payments required by Section VI
14 (Payment by Settling Defendant) and any amount due under Section VII (Failure
15 to Comply with Consent Decree Requirements). This covenant not to sue
16 accorded to Settling Defendant is conditioned upon satisfactory performance by
17 Settling Defendant of its obligations under this Consent Decree. This covenant
18 not to sue extends only to Settling Defendant and does not extend to any other
19 person.

20 IX. RESERVATION OF RIGHTS

21 16. Pre-certification Reservations. The United States reserves, and this
22 Consent Decree is without prejudice to, the right to institute proceedings in this
23 action or in a new action, or to issue an administrative order seeking to compel
24 Settling Defendant: (1) to perform response actions relating to the BPOU Area or
25 (2) to reimburse the United States for additional costs of response if, prior to
26 Certification of Completion of the Remedial Action:

27 (i) conditions at the BPOU Area, previously unknown to EPA, are
28 discovered, or

1 (ii) information, previously unknown to EPA, is received, in whole or in
2 part, and EPA determines that these previously unknown conditions or
3 information together with any other relevant information indicates that the
4 Remedial Action is not protective of human health or the environment.

5 17. Post-certification Reservations. The United States reserves, and this
6 Consent Decree is without prejudice to, the right to institute proceedings in this
7 action or in a new action, or to issue an administrative order seeking to compel
8 Settling Defendant: (1) to perform response actions relating to the BPOU Area or
9 (2) to reimburse the United States for additional costs of response if, subsequent to
10 Certification of Completion of the Remedial Action:

11 (i) conditions at the BPOU Area, previously unknown to EPA, are
12 discovered, or

13 (ii) information, previously unknown to EPA, is received, in whole or in
14 part, and EPA determines that these previously unknown conditions or this
15 information together with other relevant information indicate that the Remedial
16 Action is not protective of human health or the environment.

17 18. For purposes of Paragraph 16, the information and the conditions
18 known to EPA shall include only that information and those conditions known to
19 EPA as of May 31, 1999, the date of the ESD supplementing the ROD, and set
20 forth in the ROD, the ESD, and the administrative record supporting the ROD and
21 the ESD. For purposes of Paragraph 17, the information and the conditions known
22 to EPA shall include only that information and those conditions known to EPA as
23 of the date of Certification of Completion of the Remedial Action, and set forth in
24 the ROD, the ESD, the administrative record supporting the ROD and the ESD,
25 and the post-ROD administrative record.

26 19. General Reservation of Rights. The covenant not to sue set forth in
27 Paragraph 15 does not pertain to any matters other than those expressly specified
28 therein. The United States reserves, and this Consent Decree is without prejudice

1 to, all rights of the United States against Settling Defendant with respect to all
2 other matters including, but not limited to, the following:

3 (1) claims based on a failure by Settling Defendant to meet a requirement of
4 this Consent Decree;

5 (2) liability arising from the past, present, or future disposal, release, or
6 threat of release of hazardous substances, pollutants, contaminants, or solid wastes
7 outside of the BPOU Area;

8 (3) liability based upon Settling Defendant's transportation, treatment,
9 storage, or disposal, or the arrangement for the transportation, treatment, storage,
10 or disposal of hazardous substances, pollutants, contaminants, or solid wastes at or
11 in connection with the BPOU Area after signature of this Consent Decree by the
12 Settling Defendant, other than as provided in the ROD, as supplemented by the
13 ESD, the Remedial Action, or otherwise ordered by EPA;

14 (4) liability for damages for injury to, destruction of, or loss of natural
15 resources, and for the costs of any natural resource damage assessments;

16 (5) criminal liability;

17 (6) liability for response costs and response actions at additional operable
18 units at the Site, or a final response action, including, but not limited to, the final
19 ROD for the BPOU Area;

20 (7) liability for injunctive relief or administrative order enforcement under
21 Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not
22 within the BPOU Area; and

23 (8) liability for costs incurred or to be incurred that are not within the
24 definition of Response Costs.

25 20. Notwithstanding any other provision of this Consent Decree, the
26 United States retains all authority and reserve all rights to take any and all
27 response actions authorized by law.
28

1 X. COVENANTS NOT TO SUE BY SETTLING DEFENDANT

2 21. Subject to the reservation in Paragraph 21.e., Settling Defendant
3 hereby covenants not to sue and agrees not to assert any claims or causes of action
4 against the United States, or its contractors or employees, with respect to the
5 BPOU Area or this Consent Decree, including, but not limited to:

6 a. any direct or indirect claim for reimbursement from the Hazardous
7 Substance Superfund (established pursuant to the Internal Revenue Code, 26
8 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42
9 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

10 b. any claims arising out of response actions at or in connection with the
11 BPOU Area, including any claims under the United States Constitution, the
12 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to
13 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

14 c. any claims against the United States, including any department, agency,
15 or instrumentality of the United States, under CERCLA Sections 107 or 113
16 related to the BPOU Area;

17 d. any claims against the United States arising out of response activities at
18 the BPOU Area, including claims based on EPA's selection of response actions,
19 oversight of response activities or approval of plans for such activities.

20 e. Settling Defendant reserves, and this Consent Decree is without
21 prejudice to, claims against the United States under federal law for costs incurred
22 at the BPOU Area based upon any contract with the United States regarding
23 activities at Settling Defendant's facility within the BPOU Area.

24 22. Except as provided in Paragraph 24 (Waiver of Claims) and
25 Paragraph 29 (Waiver of Claim-Splitting Defenses), these covenants not to sue
26 shall not apply with respect to Settling Defendant in the event the United States
27 brings a cause of action or issues an order against Settling Defendant pursuant to
28 the reservations set forth in Paragraph 19, but only to the extent that Settling

1 Defendant's claims arise from the same response action or response costs that the
2 United States is seeking against Settling Defendant pursuant to the applicable
3 reservation.

4 23. Nothing in this Consent Decree shall be deemed to constitute
5 approval or preauthorization of a claim within the meaning of Section 111 of
6 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

7 24. Settling Defendant hereby agrees not to assert any CERCLA claims
8 or causes of action that it may have for all matters relating to the BPOU Area,
9 including for contribution, against any person other than Settling Defendant's
10 insurance carriers and potentially responsible parties who have received in the past
11 or receive in the future special notice from EPA in connection with the BPOU
12 Area and who are not signatories to this Consent Decree or another Consent
13 Decree in connection with the BPOU Area, for damages or costs of any kind
14 relating to response actions and costs incurred at the BPOU Area, including
15 without limitation, claims under Sections 107 and 113 of CERCLA, 42 U.S.C.
16 §§ 9607 and 9613, common law claims of negligence, contribution, equitable
17 indemnity and restitution, and claims under any other federal, state or local
18 statutory or common law. This waiver shall not apply with respect to any defense,
19 claim, or cause of action that Settling Defendant may have against any person if
20 such person asserts a claim or cause of action relating to the BPOU Area against
21 Settling Defendant.

22 XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

23 25. Except as expressly provided in Paragraph 24, nothing in this
24 Consent Decree shall be construed to create any rights in, or grant any cause of
25 action to, any person not a Party to this Consent Decree. The preceding sentence
26 shall not be construed to waive or nullify any rights that any person not a signatory
27 to this Decree may have under applicable law. Except as provided in Paragraph
28 24, each of the Parties expressly reserves any and all rights (including, but not

1 limited to, any right to contribution), defenses, claims, demands, and causes of
2 action which each Party may have with respect to any matter, transaction, or
3 occurrence relating in any way to the Site against any person not a Party hereto.
4 The Parties intend that neither this Decree nor its contents shall constitute
5 evidence in any proceeding of any liability or obligation whatsoever of Settling
6 Defendant, except that it may be used by the United States or Settling Defendant
7 in any action brought to enforce or interpret this Decree and the rights and
8 obligations of the parties hereunder.

9 26. The Parties agree, and by entering this Consent Decree this Court
10 finds, that the Settling Defendant is entitled, as of the effective date of this
11 Consent Decree, to protection from contribution actions or claims as provided by
12 CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters addressed” in
13 this Consent Decree. For purposes of this Paragraph, “matters addressed” shall
14 mean (a) the Work, (b) all response costs incurred prior to the entry of this
15 Consent Decree by the United States or any other person (except for DTSC) at or
16 in connection with the BPOU Area, and (c) all response costs related to the
17 implementation or oversight of the Work to be incurred after the entry of this
18 Consent Decree by the United States or any other person (except for DTSC) at or
19 in connection with the BPOU Area. The “matters addressed” in this Consent
20 Decree do not include those response costs or response actions as to which the
21 United States has reserved its rights under this Consent Decree (except for claims
22 for failure to comply with this Decree), in the event that the United States asserts
23 rights against Settling Defendant coming within the scope of such reservations.

24 27. Settling Defendant agrees that with respect to any suit or claim for
25 contribution brought by it for matters related to this Consent Decree, it will notify
26 the United States in writing no later than 60 days prior to the initiation of such suit
27 or claim.

28 28. Settling Defendant also agrees that with respect to any suit or claim

1 for contribution brought against it for matters related to this Consent Decree, it
2 will notify in writing the United States within 10 days of service of the complaint
3 on it. In addition, with respect to any such suit or claim, Settling Defendant shall
4 notify the United States within 10 days of service on it or receipt by it of any
5 Motion for Summary Judgment and within 10 days of receipt by it of any order
6 from a court setting a case for trial.

7 29. In any subsequent administrative or judicial proceeding initiated by
8 the United States for injunctive relief, recovery of response costs, or other relief
9 relating to the Site, Settling Defendant shall not assert, and may not maintain, any
10 defense or claim based upon the principles of waiver, res judicata, collateral
11 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
12 contention that the claims raised by the United States in the subsequent proceeding
13 were or should have been brought in the instant case; provided, however, that
14 nothing in this Paragraph affects the enforceability of the covenants not to sue set
15 forth in Section VIII (Covenant Not to Sue by Plaintiff).

16 XII. ACCESS

17 30. If Settling Defendant owns or controls any property where access is
18 needed to implement response activities at the Site, then, commencing on the date
19 of lodging of the Consent Decree, Settling Defendant shall provide the United
20 States and its representatives, including EPA and its contractors, with access at all
21 reasonable times to such property, for the purpose of conducting any response
22 activity related to the Site, including, but not limited to, the following activities:

- 23 a. Monitoring, investigation, removal, remedial or other activities at the
24 Site;
- 25 b. Verifying any data or information submitted to the United States;
- 26 c. Conducting investigations relating to contamination at or near the Site;
- 27 d. Obtaining samples;
- 28 e. Assessing the need for, planning, or implementing additional response

1 actions at or near the Site;

2 f. Inspecting and copying records, operating logs, contracts, or other
3 documents maintained or generated by Settling Defendant or its agents, consistent
4 with Section XIII (Access to Information); and

5 g. Assessing Settling Defendant's compliance with this Consent Decree.

6 31. Notwithstanding any provision of this Consent Decree, the United
7 States retains all of its access authorities and rights, including enforcement
8 authorities related thereto, under CERCLA, RCRA, and any other applicable
9 statute or regulations.

10 XIII. ACCESS TO INFORMATION

11 32. Settling Defendant shall provide to EPA, upon request, copies of all
12 documents and information within its possession or control or that of its
13 contractors or agents relating to activities at the Site or to the implementation of
14 this Consent Decree, including, but not limited to, sampling, analysis, chain of
15 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
16 correspondence, or other documents or information related to the Site.

17 33. Confidential Business Information and Privileged Documents.

18 a. Settling Defendant may assert business confidentiality claims covering
19 part or all of the documents or information submitted to Plaintiff under this
20 Consent Decree to the extent permitted by and in accordance with Section
21 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
22 Documents or information determined to be confidential by EPA will be accorded
23 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
24 confidentiality accompanies documents or information when they are submitted to
25 EPA, or if EPA has notified Settling Defendant that the documents or information
26 are not confidential under the standards of Section 104(e)(7) of CERCLA, or 40
27 C.F.R. Part 2, Subpart B, the public may be given access to such documents or
28 information without further notice to Settling Defendant.

1 b. Settling Defendant may assert that certain documents, records and other
2 information are privileged under the attorney-client privilege or any other
3 privilege recognized by federal law. If Settling Defendant asserts such a privilege
4 in lieu of providing documents, it shall provide Plaintiff with the following:
5 (1) the title of the document, record, or information; (2) the date of the document,
6 record, or information; (3) the name, title, affiliation (e.g., company or firm), and
7 address of the author of the document, record, or information; (4) the name and
8 title of each addressee and recipient; (5) a description of the subject of the
9 document, record, or information; and (6) the privilege asserted by Settling
10 Defendant. However, no document, report or other information created or
11 generated pursuant to the requirements of the Consent Decree shall be withheld on
12 the grounds that it is privileged.

13 34. No claim of confidentiality shall be made with respect to any data,
14 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
15 scientific, chemical, or engineering data, or any other documents or information
16 evidencing conditions at or around the Site.

17 XIV. RETENTION OF RECORDS

18 35. Until 10 years after the Settling Defendant's receipt of EPA's
19 notification, transmitted pursuant to Paragraph 38, of the issuance of EPA's
20 Certification of Completion of the Work, Settling Defendant shall preserve and
21 retain all records and documents now in its possession or control, or which come
22 into its possession or control, that relate in any manner to response actions taken at
23 the Site or liability of any person for response actions conducted and to be
24 conducted at the Site, regardless of any corporate retention policy to the contrary.

25 36. At the conclusion of this document retention period, Settling
26 Defendant shall notify the United States at least 90 days prior to the destruction of
27 any such records or documents, and, upon request by the United States, Settling
28 Defendant shall deliver any such records or documents to EPA. Settling

1 Defendant may assert that certain documents, records and other information are
2 privileged under the attorney-client privilege or any other privilege recognized by
3 federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff
4 with the following: (1) the title of the document, record, or information; (2) the
5 date of the document, record, or information; (3) the name, title, affiliation (e.g.,
6 company or firm), and address of the author of the document, record, or
7 information; (4) the name and title of each addressee and recipient; (5) a
8 description of the subject of the document, record, or information; and (6) the
9 privilege asserted by Settling Defendant. However, no document, report or other
10 information created or generated pursuant to the requirements of the Consent
11 Decree shall be withheld on the grounds that it is privileged.

12 37. Settling Defendant hereby certifies that, to the best of its knowledge
13 and belief, after thorough inquiry, it has not altered, mutilated, discarded,
14 destroyed or otherwise disposed of any records, documents or other information
15 relating to its potential liability regarding the Site since notification of potential
16 liability by the United States or the filing of suit against it regarding the BPOU
17 Area, and that it has fully complied with any and all EPA requests for information
18 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e),
19 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

20 XV. NOTICES AND SUBMISSIONS

21 38. Whenever, under the terms of this Consent Decree, written notice is
22 required to be given or a report or other document is required to be sent by one
23 Party to another, it shall be directed to the individuals at the addresses specified
24 below, unless those individuals or their successors give notice of a change to the
25 other Party in writing. All notices and submissions shall be considered effective
26 upon receipt, unless otherwise provided. Written notice as specified herein shall
27 constitute complete satisfaction of any written notice requirement of the Consent
28 Decree with respect to the United States, EPA, and the Settling Defendant,

1 respectively.

2 As to the United States:

3 Chief, Environmental Enforcement Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 7611, Ben Franklin Station
7 Washington, D.C. 20044
8 Re: DJ # 90-11-2-354/19

9 and

10 Robert D. Mullaney
11 Trial Attorney
12 Environmental Enforcement Section
13 U.S. Department of Justice
14 301 Howard Street, Suite 1050
15 San Francisco, CA 94105

16 As to EPA:

17 Janet Magnuson, ORC-3
18 Assistant Regional Counsel
19 United States Environmental Protection Agency
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 and

23 Wayne Praskins, SFD-7-3
24 EPA Project Coordinator
25 United States Environmental Protection Agency
26 75 Hawthorne Street
27 San Francisco, CA 94105

28 As to the Regional Financial Management Officer:

Joe Schmidt, PMD-5
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

As to Settling Defendant:

Andrew McGuirk
President
Phaostron Instrument and Electronic Company
717 N. Coney Avenue
Azusa, CA 91702

and

1 Malissa McKeith
2 Lewis, Brisbois, Bisgaard & Smith LLP
3 221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012-2601

4 XVI. EFFECTIVE DATE

5 39. The effective date of this Consent Decree shall be the date upon
6 which this Consent Decree is entered by the Court, except as otherwise provided
7 herein.

8 XVII. RETENTION OF JURISDICTION

9 40. This Court retains jurisdiction over this matter for the purpose of
10 interpreting and enforcing the terms of this Consent Decree.

11 XVIII. INTEGRATION/APPENDICES

12 41. This Consent Decree and its appendices constitute the final, complete
13 and exclusive agreement and understanding between the Parties with respect to the
14 settlement embodied in this Consent Decree. The Parties acknowledge that there
15 are no representations, agreements, or understandings relating to the settlement
16 other than those expressly contained in this Consent Decree. The following
17 appendices are attached to and incorporated into this Consent Decree:

18 “Appendix A” is the map of the BPOU Area;

19 “Appendix B” is a copy of the ROD; and

20 “Appendix C” is a copy of the ESD.

21 XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

22 42. This Consent Decree shall be lodged with the Court for a period of
23 not less than thirty (30) days for public notice and comment. The United States
24 reserves the right to withdraw or withhold its consent if the comments regarding
25 the Consent Decree disclose facts or considerations which indicate that the
26 Consent Decree is inappropriate, improper, or inadequate. Settling Defendant
27 consents to the entry of this Consent Decree without further notice.

28 43. If for any reason the Court should decline to approve this Consent

1 Decree in the form presented, this agreement is voidable at the sole discretion of
2 any Party and the terms of the agreement may not be used as evidence in any
3 litigation between the Parties.

4 **XX. SIGNATORIES/SERVICE**

5 44. Each undersigned representative of Settling Defendant and the
6 Assistant Attorney General for the Environment and Natural Resources Division
7 of the United States Department of Justice, or his delegate, certifies that he or she
8 is fully authorized to enter into the terms and conditions of this Consent Decree
9 and to execute and legally bind such Party to this document.

10 45. Settling Defendant hereby agrees not to oppose entry of this Consent
11 Decree by this Court or to challenge any provision of this Consent Decree unless
12 the United States has notified the Settling Defendant in writing that it no longer
13 supports entry of the Consent Decree.

14 46. Settling Defendant shall identify, on the attached signature page, the
15 name, address and telephone number of an agent who is authorized to accept
16 service of process by mail on its behalf with respect to all matters arising under or
17 relating to this Consent Decree. Settling Defendant hereby agrees to accept
18 service in that manner and to waive the formal service requirements set forth in
19 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
20 this Court, including, but not limited to, service of a summons.

21 **XXI. FINAL JUDGMENT**

22 47. Upon approval and entry of this Consent Decree by the Court, this
23 Consent Decree shall constitute a final judgment between the United States and
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1 the Settling Defendant. The Court finds that there is no just reason for delay and
2 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

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4
5 Dated: _____

United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Phaostron Instrument and Electronic Company, relating
3 to the BPOU Area.

4
5 FOR THE UNITED STATES OF AMERICA

6
7
8 Dated: _____

9 Kelly A. Johnson
10 Acting Assistant Attorney General
11 Environment and Natural Resources
12 Division
13 U.S. Department of Justice
14 Washington, D.C. 20530

15 Dated: _____

16 Robert D. Mullaney
17 Trial Attorney
18 Environmental Enforcement Section
19 Environment and Natural Resources
20 Division
21 U.S. Department of Justice
22 301 Howard Street, Suite 1050
23 San Francisco, California 94105
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Dated: _____

Keith Takata
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated: _____

Janet Magnuson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Phaoston Instrument and Electronic Company, relating
3 to the BPOU Area.

4 FOR PHAOSTRON INSTRUMENT AND ELECTRONIC COMPANY
5
6

7 Dated: _____

8 Andrew McGuirk
9 President
10 Phaoston Instrument and Electronic Company
11 717 N. Coney Avenue
12 Azusa, CA 91702

13 Agent Authorized to Accept Service on Behalf of Above-signed Party:

14 Malissa McKeith
15 Lewis, Brisbois, Bisgaard & Smith LLP
16 221 North Figueroa Street
17 Suite 1200
18 Los Angeles, CA 90012-2601
19 Tel.: (213) 580-6303
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